**HIGH COURT OF UTTARANCHAL AT NAINITAL.**

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 171 of 2006

Date of Decision : 10th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**

**Criminal Misc. Application No. 171 of 2006**

Om Prakash Goel
S/o Late Laxman Das
R/o 160A, Alam Giriganj
Police Station – Shyamat Ganj
Bareilly (U.P.) ... Applicant

Versus

1. State of Uttaranchal
2. Special Judicial Magistrate, Didihat,
   District – Pithoragarh
3. Jagat Singh Mehta
   S/o Sri Udai Singh
   R/o Muwani
   Police Station – Thal,
   Tehsil – Didihat
   District – Pithoragarh ... Opp. Parties

Sri S.K. Mishra, Learned counsel for the applicant
Sri G.S. Sandhu, Learned A.G.A. for the State

**Hon'ble J.C.S. Rawat, J.**

The present petition u/s 482 has been directed to quash the impugned order dated 11.11.2003 in Criminal Case No. 708 of 2003 Jagat Singh Mehta Vs. M/s Goel Enterprises through Partner Sri Om Prakash Goel u/s 138 N.I.Act and to quash the complaint pending in the court of Special Judicial Magistrate, Didihat, District Pithoragarh.

The complainant opposite party No. 3 filed a complaint case against the applicant before the court of Special Judicial Magistrate u/s 138 N.I.Act. The complainant adduced the evidence u/s 200 and 202 Cr.P.C. and thereafter the summoning order was passed by the learned Magistrate.

Feeling aggrieved by the summoning order the present petition has been filed.

Heard learned counsel for the applicant and perused the record.

It was contended on behalf of the applicant that there is no averment in the complaint that the applicant was also incharge of the firm. It was further contended that the applicant is old and infirm person. It was contended that the cognizance order may be set aside and the complaint may also be dismissed. Learned A.G.A. refuted the contention and contended that it is very much in the last para of the complaint. The perusal of the complaint reveals that it is averred in the complaint that all the partners were equally liable for all the acts done by the said company and they were liable for their acts for the company. It is also alleged in para 2 of the complaint that the accused-applicant also had to pay a sum of Rs. 1 lac and he did not pay it. The averment had been made that the applicant is also liable. This court can set aside the cognizance order on the ground that the applicant is old and infirm. I do not find any force in the contention of the learned counsel for the applicant.

It is also alleged in the complaint that the applicant acts for the firm and it is also alleged in the complaint that the accused/applicant had taken the articles from the complainant for their work. It is also alleged in the complaint that the person who has issued the cheque had died.

It was further contended that the first notice was not served upon the accused-applicant and as such the second notice was given which was served upon the applicant by the complainant. It was further contended that the complaint should have been filed with stipulated time provided u/s 138 N.I.Act after the first notice. The complaint was not instituted after the first notice hence the complaint is barred by time. Learned A.G.A. further contended that if the second notice

have been served upon the applicant then there is no question of complaint being barred by the limitation. I do not find any merit in the argument advanced by the learned counsel for the applicant. In this case complaint is not barred by the limitation. It is also alleged in the complaint that the first notice was not served upon the applicant as such the second notice was sent which was served upon the applicant.

In view of the forgoing discussion, I am of the view that this petition devoids of merit is liable to be dismissed and is dismissed accordingly.

**(J.C.S. RAWAT, J.)**

10th March, 2006
Shiv